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SENATE BILL 402

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO BUSINESS ENTITIES; CHANGING REPORTING PERIODS;
CHANGING PENALTIES; AMENDING THE CORPORATE REPORTS ACT;
AMENDING AND ENACTING SECTIONS OF THE LIMITED LIABILITY COMPANY
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 53-5-7 NMSA 1978 (being Laws 1959,
Chapter 181, Section 7, as amended) is amended to read:

"53-5-7. FAILURE TO FILE CORPORATE REPORTS--PENALTY.--

A. A domestic corporation required to file [~~an~~
~~annual~~] a biennial corporate report, as provided in the
Corporate Reports Act, that fails to submit the report within
the time prescribed for a reporting period shall incur a civil
penalty of [~~two hundred dollars (\$200)~~] fifty dollars (\$50.00)
in addition to the fee for filing the report, such civil

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1 penalty to be paid upon filing the report. Sixty days after
2 written notice of failure to file a report has been mailed to
3 the corporation's mailing address as shown in the last
4 corporate report filed with the public regulation commission,
5 the corporation shall have its certificate of incorporation
6 canceled by the commission without further proceedings, unless
7 the report is filed and all fees and penalties are paid within
8 that sixty-day period.

9 B. A foreign corporation required to file [~~an~~
10 ~~annual~~] a biennial corporate report that fails to submit the
11 report within the time prescribed for any reporting period
12 shall incur a civil penalty of [~~two hundred dollars (\$200)~~]
13 fifty dollars (\$50.00) in addition to the fee for filing the
14 report. The civil penalty shall be paid upon filing the
15 report. Sixty days after written notice of failure to file a
16 report has been mailed to the corporation's mailing address as
17 shown in the last corporate report filed with the public
18 regulation commission, the corporation shall have its
19 certificate of authority to do business in this state canceled
20 by the commission without further proceedings, unless the
21 report is filed and all fees and penalties are paid within that
22 sixty-day period. Nothing in this section authorizes a
23 forfeiture of the right or privilege of engaging in interstate
24 commerce.

25 C. A domestic or foreign corporation not exempted

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1 from filing a supplemental report, as provided in the Corporate
2 Reports Act, that fails to submit the required report within
3 the time prescribed for a reporting period shall incur a civil
4 penalty of [~~two hundred dollars (\$200)~~] fifty dollars (\$50.00)
5 in addition to the fee for filing the report, such civil
6 penalty to be paid upon filing the report.

7 D. An order of the public regulation commission may
8 be appealed to the district court of Santa Fe county within
9 sixty days of the date it was issued by the commission.

10 E. If a report required under the Corporate Reports
11 Act is mailed, the public regulation commission shall allow
12 three additional days when considering the postmark as the date
13 of submission when determining if a filing is timely."

14 Section 2. Section 53-19-63 NMSA 1978 (being Laws 1993,
15 Chapter 280, Section 63, as amended) is amended to read:

16 "53-19-63. FILING, SERVICE AND COPYING FEES.--The [~~public~~
17 ~~regulation~~] commission shall charge and collect:

18 A. for filing the original articles of organization
19 and issuing a certificate of organization, a fee of fifty
20 dollars (\$50.00);

21 B. for filing amended or restated articles of
22 merger and issuing a certificate of amended or restated
23 articles, a fee of fifty dollars (\$50.00);

24 C. for filing articles of merger, conversion or
25 consolidation and issuing a certificate of consolidation, a fee

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1 of one hundred dollars (\$100);

2 D. for filing articles of dissolution or revocation
3 of dissolution, a fee of twenty-five dollars (\$25.00);

4 E. for issuing a certificate for any purpose not
5 otherwise specified, a fee of twenty-five dollars (\$25.00);

6 F. for furnishing written information on any
7 limited liability company, a fee of twenty-five dollars
8 (\$25.00);

9 G. for providing from the commission's records any
10 document or instrument, a fee of one dollar (\$1.00) per page,
11 but in [~~one~~] no case less than ten dollars (\$10.00), and a fee
12 of twenty-five dollars (\$25.00) for certification of documents
13 or instruments;

14 H. for accepting an application for reservation of
15 a name or for filing a notice of the transfer of any name
16 reservation, a fee of twenty dollars (\$20.00);

17 I. for filing a statement of change of address of
18 registered office or registered agent, or both, a fee of twenty
19 dollars (\$20.00);

20 J. for filing an agent's statement of change of
21 address of registered agent for each affected limited liability
22 company, twenty dollars (\$20.00);

23 K. for issuing a registration to a foreign limited
24 liability company, a fee of one hundred dollars (\$100);

25 L. for filing an amendment of the registration of a

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1 foreign limited liability company, a fee of fifty dollars
2 (\$50.00); ~~and~~

3 M. for filing an application for cancellation of
4 registration of a foreign limited liability company and issuing
5 a certificate of cancellation, a fee of twenty-five dollars
6 (\$25.00);

7 N. for filing of a biennial report, ten dollars
8 (\$10.00); and

9 O. for failing to submit a biennial report within
10 the time required pursuant to Section 53-19-75 NMSA 1978, a
11 civil penalty of ten dollars (\$10.00) in addition to the fee
12 for filing the report."

13 Section 3. Section 53-19-66.1 NMSA 1978 (being Laws 2001,
14 Chapter 200, Section 74) is amended to read:

15 "53-19-66.1. ADMINISTRATIVE REVOCATION.--

16 A. A limited liability company may be revoked by
17 the commission if:

18 ~~[A.]~~ (1) the limited liability company has
19 failed for a period of thirty days to appoint and maintain a
20 registered agent as required by the Limited Liability Company
21 Act; ~~[or~~

22 ~~B.]~~ (2) the limited liability company has
23 failed for a period of thirty days, after change of its
24 registered office or registered agent, to file in the office of
25 the commission a statement of the change as required by the

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1 Limited Liability Company Act; or

2 (3) the limited liability company has failed
3 to file its biennial report within the time required by the
4 Limited Liability Company Act or has failed to pay any fees
5 prescribed by that act when they have become due and payable.

6 B. No limited liability company may be
7 administratively revoked pursuant to this section unless:

8 (1) the commission has given the corporation
9 not less than sixty days' notice thereof by first class regular
10 mail addressed to its registered office in New Mexico and
11 either to its principal office in the state or country pursuant
12 to the laws of which it is organized or the principal office of
13 the limited liability company as each address is shown in the
14 last report filed with the commission; and

15 (2) the limited liability company fails prior
16 to revocation to file the biennial report; pay fees or
17 penalties; appoint and maintain a registered agent; file the
18 required statement of change of office or registered agent; or
19 correct such misrepresentation pursuant to the Limited
20 Liability Company Act."

21 Section 4. A new section of the Limited Liability Company
22 Act, Section 53-19-75 NMSA 1978, is enacted to read:

23 "53-19-75. [NEW MATERIAL] BIENNIAL REPORT.--

24 A. Each domestic and foreign limited liability
25 company authorized to conduct affairs in New Mexico shall file,

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1 within the time prescribed by the Limited Liability Company
2 Act, on forms prescribed and furnished by the commission to the
3 limited liability company not less than thirty days prior to
4 the date such report is due, a biennial report setting forth:

5 (1) the name of the limited liability company
6 and the state or country pursuant to the laws of which it is
7 organized;

8 (2) the address of the registered office of
9 the limited liability company in New Mexico and the name of its
10 registered agent in this state at such address, and in the case
11 of a foreign limited liability company, the address of its
12 registered office in the state or country pursuant to the laws
13 of which it is organized and the address of the principal
14 office of the limited liability company, if different from the
15 address of the registered office; and

16 (3) the names and respective addresses of the
17 members and manager of the limited liability company.

18 B. The biennial report shall be signed by an
19 authorized member or manager. If the limited liability company
20 is in the hands of a receiver or trustee, the biennial report
21 shall be executed on behalf of the limited liability company by
22 the receiver or trustee. A copy of the biennial report shall
23 be maintained at the limited liability company's principal
24 place of business as contained in the report and shall be made
25 available to the general public for inspection during regular

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1 business hours."

2 Section 5. A new section of the Limited Liability Company
3 Act, Section 53-19-76 NMSA 1978, is enacted to read:

4 "53-19-76. [NEW MATERIAL] FILING OF BIENNIAL REPORT.--The
5 biennial report of a domestic or foreign limited liability
6 company shall be delivered to the commission on or before the
7 fifteenth day of the fifth month following the end of its
8 taxable year, except that the first biennial report of a
9 domestic or foreign limited liability company shall be filed
10 within thirty days of the date on which its certificate of
11 organization or its certificate of registration was issued by
12 the commission."

13 Section 6. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.